

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MARK A. McCLURE, ET AL.,**

*Plaintiffs*

**v.**

**SPECIALIZED LOAN SERVICING, LLC  
ET AL.,**

*Defendants*

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**Case 4:23-cv-4045**

**MCCARTHY HOLTHUS, LLP'S  
CORRECTED MOTION TO DISMISS**

COMES NOW McCarthy Holthus, LLP (“McCarthy Holthus”) Substitute Trustee, Defendant herein, and file this corrected Motion to Dismiss and for good and sufficient cause would show the Court the following:

**BACKGROUND**

1. The original motion to dismiss was filed on November 21, 2023 under Doc. 5. The motion was not signed by counsel. This corrected motion is a duplicate of the filing under Doc. 5 and is filed to correct the unsigned version of the motion. All other arguments and citations are verbatim.

2. McCarthy Holthus, Substitute Trustee, filed its Original Verified Answer in this matter on October 19, 2023. McCarthy Holthus filed the verified answer in the 457<sup>th</sup> Montgomery County District Court prior to removal of this action. The matter was removed to this court on October 24, 2023 (Doc. 1). McCarthy Holthus’ verified answer is on file with this court under Doc. 1-7.

### IMMUNITY OF MCCARTHY HOLTHUS

3. McCarthy Holthus acted solely in the capacity of trustee or substitute trustee and is exempt and immune from liability for damages under the statutes of the state of Texas. McCarthy Holthus, as the Substitute Trustees named in a suit or proceeding as permitted by section 51.007 of the Texas Property Code, plead in this answer that McCarthy Holthus as the Substitute Trustee is not a necessary party and provides to the court as a part of this answer a verified denial stating the basis for the reasonable belief that McCarthy Holthus as Substitute Trustee was named as parties solely in its capacity as a Substitute Trustee under the Deed of Trust. The pleadings filed by Plaintiffs shows that the only reason why McCarthy Holthus was joined as a party Defendant was because it was a Substitute Trustees named pursuant to the provisions of a Deed of Trust secured by real property in which an interest is asserted by Plaintiffs and which real property is made the subject of this suit.

4. Pursuant to the Texas Property Code §51.007(b) “...within 30 days after the filing of the trustee’s verified denial, *a verified response* is due from all parties to the suit or proceeding setting forth all matters, whether in law or fact, that rebuts the trustee’s verified denial...” Plaintiffs did not file the required verified response.

5. The Texas Property Code further provides that “...if a party has no objection or fails to file a timely verified response to the trustee’s verified denial, *the trustee shall be dismissed from the suit or proceeding without prejudice...*” Tex. Prop. Code §51.007(c). (emphasis added).

6. McCarthy Holthus is not a necessary party and is named as a party to this litigation solely in its capacity as Substitute Trustees under the Deed of Trust. To-date, Plaintiffs have filed no verified response to McCarthy Holthus’ verified denial and the statutory deadline for doing so is passed. Accordingly, McCarthy Holthus must be dismissed.

7. Further, McCarthy Holthus is not liable for any good faith error resulting from reliance on any information, in law or in fact, provided by the mortgage or mortgagee or their respective attorney(s), agent(s), representative(s) or third party(s).

For the foregoing reasons, McCarthy Holthus, LLP, Substitute Trustee respectfully requests that the Court sign an order dismissing McCarthy Holthus from this suit, and that the court enter such other orders, at law or in equity that the Court deems just and reasonable.

Respectfully Submitted,  
**MCCARTHY & HOLTHUS, LLP**

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HOLTHUS, LLP

**Certificate of Conference**

I certify that on November 21, 2023 I conferred with Dennis Sullivan co-counsel for Plaintiff to discuss opposition to the foregoing motion. As of the date of filing the motion, Plaintiff is opposed to the relief requested.

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Robert L. Negrin

**Certificate of Service**

I certify that a true and correct copy of the foregoing motion to dismiss McCarthy Holthus was served upon the following parties/counsel of record pursuant to the Federal Rules of Civil Procedure on November 21, 2023.

Kenna M. Seiler  
2700 Research Forest Drive  
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The Woodlands, Texas 77381

Eric J. Simonson  
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New Orleans, LA 70130

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Robert L. Negrin